

P-430, 421, 407, 405, 426, 520/CP-92-1131 ORDER REQUIRING COST
STUDIES AND PROPOSED RATES

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
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In the Matter of a Petition for
Extended Area Service From
Norwood to the Twin Cities
Metropolitan Calling Area

ISSUE DATE: February 1, 1993

DOCKET NO. P-430, 421, 407, 405,
426, 520/CP-92-1131

ORDER REQUIRING COST STUDIES AND
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PROCEDURAL HISTORY

Between May and June 1991, the Norwood exchange was polled to see if customers were in favor of extended area service (EAS) to the Minneapolis/St. Paul Metropolitan Calling Area (MCA). Norwood subscribers had not petitioned for EAS to the MCA. The polling of Norwood subscribers was part of a legislative initiative to expand EAS in the metropolitan area. Polling was conducted in all exchanges within the seven county MCA that were not yet members of the MCA. See Section 2 of Minn. Laws 1990, Ch. 513. According to Section 2, no petition from subscribers was required. If a majority of the responding customers in the polled exchange favored inclusion in the MCA, the Commission would have ordered it. Minn. Laws 1990, Ch. 513, Sec. 2, subbd. 3.

In Norwood's case, less than 50 percent of its subscribers responding to the polling supported the installation of EAS. The Commission, therefore, simply directed the involved telephone companies to notify their subscribers of the polling results and closed the Norwood EAS Docket, P-430, 421, 407, 405, 426/CI-90-442. See Metro EAS Dockets, P-405, 421/CP-86-55; P-520, 421/CP-86-537; P-421, 407/CP-87-536; P-407, 421, 430, 405, 426/CI-90-440; P-430, 421/CP-86-5; P-407, 421, 430, 405, 426/CP-88-839; P-430, 421, 407, 405, 426/CI-90-441; P-430, 421, 407, 405, 426/CI-90-442 ORDER CERTIFYING ELECTION RESULTS, DIRECTING INSTALLATION OF EXTENDED AREA SERVICE IN CERTAIN EXCHANGES, REQUIRING IMPLEMENTATION PLANS, AND CLOSING CERTAIN DOCKETS (June 26, 1991), page 5.

On September 22, 1992, subscribers in the Norwood exchange petitioned for EAS to the MCA.

On September 24, 1992, the Minnesota Department of Public Service (the Department) requested United Telephone Company (United), the

telephone company serving the Norwood exchange, to file studies of the traffic between Norwood and the MCA.

On November 6, 1992, United filed the requested traffic study.

On January 26, 1993, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

Application of a Two Year Waiting Period

Minn. Rules 7815.1500 states:

The Commission shall not...consider a petition for installation of extended area service sooner than two years after denying a previous petition for installation of extended area service between the same two exchanges.

There is no dispute that EAS was rejected in previous polling of Norwood subscribers in 1991. Also, it is clear that two years has not elapsed since the June 26, 1991 rejection of EAS for Norwood. The question is, more fundamentally, whether Minn. Rules 7815.1500 with its two year waiting period applies to the petition currently before the Commission.

The Commission finds that the rule applies despite the fact that no previous "petition" has been denied, as a strict literal reading of the rule would appear to require. The fact that the initial rejection of EAS in Norwood came following a legislatively mandated polling of Norwood subscribers rather than following a petition is immaterial. The Commission adopted the rule to prevent the expense and inefficiency of repetitious petitions for EAS when that service has been recently rejected on the merits. When the rule was adopted, the *only* way the question of a potential EAS route could be raised was by petition, so the rule's use of the phrase "a previous petition" was clearly not intended to carve exceptions to the rule's application. Section 2 of the EAS statute created a one-time alternative trigger to the polling process; it mandated the polling of subscribers in certain non-MCA exchanges in the metro area and required the installation of EAS in those exchanges if the polling showed adequate subscriber support. The Commission finds no legislative intent in the creation of this one-time provision to override the Commission's rule requiring a two year waiting period after EAS has been rejected.

In addition, since the purpose of the Commission's rule is clear, the Commission is disinclined to thwart that purpose by giving it the overly narrow reading that the rule does not apply in instances where the initial question of EAS was raised by legislative mandate, a manner that did not exist when the Commission adopted the rule. Such a reading would take the

phrase "a previous petition" out of context and give it unwarranted determining emphasis. Such a distortion would result in petitions similar in all relevant respects receiving different treatment. A petition for EAS would have to be processed and balloted despite a recent rejection of EAS by the exchange's subscribers if the previous balloting had been conducted pursuant to legislative mandate while a petition for EAS would be delayed for two years if the previous balloting that had rejected EAS had been conducted as part of a process initiated by subscriber petition. In short, then, the Commission will simply give the rule its meaning and find that it applies to the current petition.

The next question is whether the petition sponsor's request for a variance from the rule's two year waiting requirement will be granted. The Commission has authority to vary its rules if it finds that enforcement of the rule would be unduly burdensome, that granting the variance would not adversely affect the public interest, and granting the variance would not conflict with standards imposed by law. Minn. Rules, Part 7830.4400.

The Commission will grant the requested variance and consider this petition. There is no standard of law (statute) that conflicts with the requested variance and under the circumstances of this case the Commission finds that imposing the rule's two year waiting period would be an undue burden upon Norwood subscribers and that granting the variance would not adversely affect the public interest.

The petition sponsors claimed widespread distress among Norwood subscribers over having to continue to pay high toll bills. The sponsors cited close employment and familial ties between Norwood subscribers and the MCA due to the proximity of Norwood to the MCA. The Commission notes that the high number of subscribers signing the EAS petition and the traffic study filed in this matter appear to support the sponsors' assertions. The study shows a high level of toll calls to the MCA by Norwood subscribers: 90.7 percent of Norwood subscribers make one or more calls to the MCA per month. In addition, the sponsors argued that the earlier balloting had not been preceded by a necessary education campaign to inform subscribers regarding the benefits of EAS. Even so, the earlier balloting showed significant support for the installation of EAS: 47 percent. For these reasons, the Commission is inclined to give less weight to the earlier ballot rejection than it normally would give. In these circumstances, imposition of the mandatory two year waiting period would be an undue burden and removing that waiting period to allow consideration of this petition would not adversely affect the public interest.

Consideration of the Petition

The EAS statute, Minn. Stat. § 237.161 (1990), provides that the Commission shall grant a request to install EAS when three criteria have been met:

1. Adjacency: the petitioning exchange is contiguous to an exchange or local calling area to which extended area service is requested in the petition;
2. Adequate Traffic: at least 50 percent of the customers in the petitioning exchange make one or more calls per month to the exchange or local calling area to which extended area service is requested, as determined by a traffic study; and
3. Subscriber Support: a poll of subscribers in the petitioning exchange shows that a majority of the customers responding to a poll conducted by the Commission favor the installation of the proposed EAS, unless all parties and the Commission agree that no polling is necessary. Minn. Stat. § 237.161, subd. 1 (a) (1-3) (1990).

Adjacency

Norwood meets the adjacency requirement of Minn. Stat. § 237.161, subd. 1 (1990). Statutory adjacency may be achieved either by sharing a border with an exchange to which EAS is sought or by sharing a border with a local calling area to which EAS is sought. Norwood shares a common border with several exchanges that are members of the MCA: Belle Plaine, Cologne, and Waconia. Norwood is, therefore, adjacent to the local calling area (MCA) to which EAS is sought.

Traffic

There is sufficient traffic between Norwood and the MCA to satisfy the statute's requirement. A three month study conducted by United shows that on the average 90.7 percent of Norwood subscribers placed one per more calls per month to the MCA.

Subscriber Support

Having found that the Norwood petition meets the adjacency and traffic requirements, the next step is to set rates for polling. These rates will then be used in polling subscribers in the Norwood exchange to determine whether the final criterion for each route (adequate subscriber support) will be met.

To provide a basis for adopting such rates, the Commission will require the companies serving Norwood and the MCA exchanges¹ to file cost studies and proposed rates. United and all the

¹ The Norwood exchange is served by United Telephone Company (United). Telephone companies serving the MCA are United, U S West Communications, Inc. (USWC), GTE Minnesota (GTE), Eckles Telephone Company (Eckles), Scott-Rice Telephone Company (Scott-Rice) and Vista Telephone Company (Vista).

involved local telephone companies will need to cooperate to produce a cost study for the route. The companies should produce studies using the same parameters wherever possible. Twelve months of recent traffic data is the preferred amount. Proposed rates, of course, will be based on additional investment and expenses required to provide EAS and will maintain all affected telephone companies income neutral.

ORDER

1. A variance from the two year waiting period of Minn. Rules, Part 7815.1500 to allow consideration of this petition is granted.
2. The Norwood exchange is adjacent to the petitioned MCA and has sufficient traffic to the MCA to warrant further consideration of the Norwood petition.
3. Within 75 days of this Order, United, USWC, GTE, Eckles, Scott-Rice and Vista shall file cost studies and proposed rates for EAS between Norwood and the MCA.
4. Within 75 days of this Order, United shall file its proposed lower cost alternative.
5. Within 45 days after cost studies and proposed rates are filed, the Minnesota Department of Public Service (the Department) shall file its Report and Recommendations.
6. Parties shall have 20 days following the filing of the Department's Report and Recommendations to file comments.
7. Any party recommending changes to the cost studies or proposed rates shall file proposed rates reflecting its recommendations.
8. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)